

Via Facsimile and First Class Mail

March 5, 2004

Planning Board
Town of New Windsor
555 Union Avenue
New Windsor, NY 12553

Re: Epiphany College—Patriot Bluff Estates Project SEIS

Dear Sirs:

We are writing on behalf of Riverkeeper to encourage you, as lead agency on the Epiphany College—Patriot Bluff Estates Project, to require the developers to prepare a Supplemental Environmental Impact Statement ("SEIS"). The current application before the Planning Board relies on an outdated and inadequate Environmental Impact Statement ("EIS") prepared in 1988. Under New York's State Environmental Quality Review Act ("SEQRA") the Board must take a "hard look," at the significant changes in the circumstances surrounding the proposed project and changes in project plans. Given the nature and extent of the changes, their relationship to the community's objections, and the State's statutes, regulations and policies, it is incumbent upon the Board to prepare a SEIS.

In the intervening sixteen years, there have been dramatic shifts in the circumstances surrounding the project—changes which should trigger the need for an SEIS. First, Orange County has experienced an eleven percent increase in population from 1990 to 2000, according to figures obtained from the U.S. Census Bureau. This has led to uncontrolled sprawl growth and increased traffic countywide, and on Route 32. This project has the potential to exacerbate this problem. Second, New Windsor's water and wastewater infrastructure have been under increased strain, as evidenced by the Town's water moratoria and significant problems with the wastewater treatment system. The wastewater systems, in particular, may not respond well to increased flows from the proposed project. Third, wildlife patterns and habitat values, which received substandard review in the original EIS, need to be re-scrutinized. Some portions of the proposed site may have elevated habitat value, given the sprawl-forced loss of habitat countywide. In addition to changes in the circumstances surrounding the project, changes in the actual project may also trigger the need for an SEIS, including apparent plans to use Park Hill Drive as ingress-egress for the development.

To determine whether potential impacts will be significant and require further review, a lead agency, such as the Planning Board, must (1) identify the relevant areas of environmental concern, (2) take a "hard look" at them, and (3) make a "reasoned elaboration" of the basis for its determination. See 6 NYCRR §617.7; see also Jackson v. New York State Urban Development

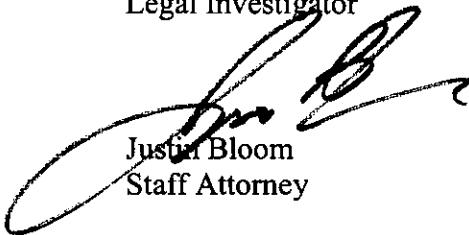
Corporation, 67 N.Y.2d 400, 417, 494 N.E.2d 429, 436 (N.Y. 1986). The regulations effectuating SEQRA contemplate the preparation of an SEIS to address "specific significant adverse environmental impacts not addressed or inadequately addressed in the EIS that arise from (a) changes proposed for the project; (b) newly discovered information,¹¹ or (c) a change in circumstances related to the project." See 6 N.Y.C.R.R. § 617.9(a)(7)(i). A lead agency "is required to take a 'hard look' at the changes or new information" to determine whether an SEIS is required. Committee for Environmentally Sound Dev., 737 N.Y.S.2d at 801; see also Jackson, 67 N.Y.2d at 429. Where a SEIS is required, it is subject to all procedures set forth in the SEQRA regulations. See 6 N.Y.C.R.R. § 617.9(a)(7)(iii). A SEIS is required where the outstanding issues are "at the heart of the environmental objections to the project..." Glen Head—Glenwood Landing Civic Council, Inc. v. Town of Oyster Bay, 453 N.Y.S.2d 732, 739, 88 A.D.2d 484, 495 (2d Dept 1982).

In short, the Planning Board should exercise its authority to require a SEIS, in light of the changes in the circumstances surrounding the project and to changes in the project itself. The 1988 EIS was prepared by a prior developer, envisions different development parameters, and is dramatically outdated. Therefore, the Planning Board should re-open the SEQR process to ensure that it takes required "hard look" at the proposed project. If you have any questions, please contact us at 845-424-4149 x230.

Very truly yours,



Basil Seggos
Legal Investigator



Justin Bloom
Staff Attorney

¹ The SEQRA regulations further establish that in instances of "newly discovered information," the decision to require an SEIS must be based upon: "(a) the importance and relevance of the information; and (b) the present state of the information in the EIS." 6 N.Y.C.R.R. § 617.9(a)(7)(ii).